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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES RINESTINE,

Defendant and Appellant.

D054073

(Super. Ct. No. SCD207990)

APPEAL from a judgment of the Superior Court of San Diego County, Jeffrey F. Fraser, Judge. Affirmed.

James Rinestine entered a negotiated guilty plea to committing a lewd act on a child under 14 years old (Pen. Code, § 288, subd. (a))¹ with substantial sexual contact (§ 1203.066, subd. (a)(8)). The court sentenced him to prison for the eight-year upper term. Rinestine appeals. We affirm.

¹ Statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL BACKGROUND

Rinestine was the boyfriend of the victim's mother. Beginning in January 2002, when the victim was 10 years old, Rinestine put his hand down her pants and rubbed her vagina. This occurred about two times a week, off and on, when the victim was sleeping. On one occasion, Rinestine put his mouth on the victim's vagina. On another occasion, he put the tip of his finger inside her vagina.

As part of the April 2008 plea bargain, the court dismissed with a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754) six counts of lewd conduct on a child under 14 with substantial sexual contact and one count of oral copulation on a child under 14 (§ 288a, subd. (c)(1)) with substantial sexual contact. The offenses underlying these counts occurred between January 2002 and December 2004 and involved the same victim as the count to which Rinestine pleaded guilty. There were no promises in the plea bargain regarding the sentence.

DISCUSSION

Rinestine's appointed appellate counsel filed a brief summarizing the facts and proceedings below. Counsel presented no argument for reversal, but asked this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel listed, as a possible but not arguable issue, whether the court abused its discretion by sentencing Rinestine to the upper term. We granted Rinestine permission to file a brief on his own behalf. He did

not respond. We requested additional briefing concerning Rinestine's counsel's possible issue. Counsel for both parties responded to our request.²

At Rinestine's September 2008 sentencing, as aggravating factors the court cited the victim's vulnerability and emotional injuries, Rinestine's serious and callous conduct, his abuse of a position of trust, his lack of honesty, the ongoing nature of the molestation, and the substantial reduction in prison time exposure Rinestine achieved through the plea agreement. The court did not abuse its discretion by imposing the upper term. (§ 1170, subd. (b); *People v. Sandoval* (2007) 41 Cal.4th 825.)

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738 has disclosed no other reasonably arguable appellate issues. Rinestine has been competently represented by counsel on this appeal.

² Rinestine also responded. He contends: (1) the crime underlying his conviction is considered a violent crime but he is not violent; (2) he has no prior felony convictions; (3) he twice asked for counsel during his interrogation by the police, "but was still suckered into taking a lie detector test"; the test yielded an inconsistency and he confessed to licking the victim's vagina; he pleaded guilty to only one count, but after he signed the change of plea form, the prosecutor "asked to have all the accusations added on," making it appear as if Rinestine had pleaded guilty to all of the charges; (4) the judge was biased against Rinestine and his attorney; (5) the victim's preliminary hearing testimony was not credible and most of the accusations were untrue; and (6) the sentence should be reduced.

Because the trial court denied Rinestine's request for a certificate of probable cause, this court limited issues on appeal to post-plea matters. Rinestine is therefore precluded from raising contentions (1), (3), and (5). As to contention (4), a review of the entire record discloses no bias by the court. Contention (2) does not affect any of the issues in this case. There was no sentencing error.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

McDONALD, J.